



**BILLING CODE:** 3720-58

**DEPARTMENT OF DEFENSE**

**Department of the Army; Corps of Engineers**

**Intent to Revise Scope of Draft Environmental Impact Statement:**

**Water Control Manual for the Apalachicola-Chattahoochee-Flint River Basin; Updating the Account for U.S. Court of Appeals Eleventh Circuit Ruling and June 2012 Legal Opinion of the Corps' Chief Counsel Regarding Authority to Accommodate Municipal and Industrial Water Supply from the Buford Dam/Lake Lanier Project**

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. Army Corps of Engineers (Corps), Mobile District, intends to revise the scope of the Environmental Impact Statement (EIS) for the Water Control Manual (WCM) updates for the Apalachicola-Chattahoochee-Flint (ACF) River Basin in Alabama, Florida, and Georgia, in light of a June 2011 decision of the U.S. Court of Appeals for the Eleventh Circuit and a June 2012 legal opinion of the Corps' Chief

Counsel regarding authority to accommodate municipal and industrial water supply from the Buford Dam/Lake Lanier project. The Corps is updating the water control plans and manuals for the ACF Basin in order to improve operations for authorized purposes to reflect changed conditions since the manuals were last developed. The revised EIS will also consider, along with operations for all authorized purposes, an expanded range of water supply alternatives associated with the Buford Dam/Lake Lanier project, including current levels of water supply withdrawals and additional amounts that Georgia has requested from Lake Lanier and downstream at Atlanta. In all other respects, the scope of the EIS for the WCM updates will remain as described in the Updated Scoping Report, Environmental Impact Statement, Update of the Water Control Manual for the Apalachicola-Chattahoochee-Flint (ACF) River Basin, in Alabama Florida, and Georgia (March 2010), available at <http://www.sam.usace.army.mil/pa/acf-wcm/docs.htm>, The Corps solicits comments from interested persons regarding the scope of the EIS for the WCM updates.

**DATES:** The public comment period will commence with publication of this notice, and will end 60 days after its publication. This notice will also be distributed to those who commented during the original scoping comment periods

of October-December 2008 (see 72 FR 63561 [November 9, 2007], 73 FR 9780 [February 22, 2008], 73 FR 54391 [September 19, 2008]), and November-December 2009 (see 74 FR 59965 [November 19, 2009]). This distribution will occur by mail and/or email on or about the date of this notice. No additional public scoping meetings are planned. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS, should be submitted in writing to (see **ADDRESSES**) and will be accepted throughout the public comment period. Comments may also be submitted by using the electronic comment form at: <http://www.sam.usace.army.mil/pa/acf-wcm/form.htm>.

**ADDRESSES:** To facilitate the Master Water Control Manual update, a support contract has been awarded to Tetra Tech, Inc. for preparation of the EIS and additional scoping. Please mail written comments to Tetra Tech, Inc., 61 St. Joseph Street, Suite 550, Mobile, AL 36602-3521.

**FOR FURTHER INFORMATION CONTACT:** Questions about the manual update or National Environmental Policy Act (NEPA) process should be directed to: Mr. Brian Zettle, Biologist, Environment and Resources Branch, Planning and Environmental Division, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, AL 36628-0001; Telephone (251) 690-2115; or delivered by electronic facsimile at

(251) 694-3815; or email: [brian.a.zettle@usace.army.mil](mailto:brian.a.zettle@usace.army.mil).

You may also request to be included on the mailing list for public distribution of notices, meeting announcements and documents.

**SUPPLEMENTARY INFORMATION:** The Corps is updating the water control plans and manuals for the ACF Basin in order to improve operations to reflect changed conditions since the manuals were last developed. As explained in a November 2009 Federal Register Notice of Intent, 74 FR 59965 (November 19, 2009), and in the March 2010 Updated Scoping Report, the Corps previously narrowed the scope of the EIS for the WCM update to exclude from consideration certain water supply operations at the Buford Dam/Lake Lanier project that would have violated a July 2009 district court order. In June 2011, the U.S. Court of Appeals for the Eleventh Circuit vacated that 2009 district court order and directed the Corps to determine its legal authority to operate the Buford Dam/Lake Lanier Project to accommodate water supply withdrawals. See *In re Tri-State Water Rights Litigation*, 644 F.3d 1160 (11th Cir. 2011). In compliance with the Eleventh Circuit's order, the Chief Counsel issued a legal opinion on June 25, 2012 (available at [http://www.sam.usace.army.mil/2012ACF\\_legalopinion.pdf](http://www.sam.usace.army.mil/2012ACF_legalopinion.pdf)), concluding that the Corps has the legal authority to

accommodate both current and increased levels of water supply withdrawals from Lake Lanier and downstream at Atlanta. The Chief Counsel's legal opinion does not dictate what operational decisions will be made, with regard to water supply or otherwise, but it does establish certain analytical principles that will be taken into account as the Corps makes its final operational decisions at the conclusion of the WCM update process. Such decisions will be made in light of all applicable authorities, and will be guided by the legal principles articulated in the Chief Counsel's June 25, 2012 opinion.

In light of this legal opinion and the Eleventh Circuit's ruling, it is appropriate for the Corps to consider a broader range of water supply alternatives, including both current levels of water supply withdrawals and increased withdrawals, from Lake Lanier and downstream at Atlanta, that have been determined to be within the Corps' legal authority to implement. All other scoping aspects described in the March 2010 Updated Scoping Report remain the same. Information on the ACF River Basin and the

Master Water Control Manual Update process will be posted on the Mobile District Web page as it becomes available: <http://www.sam.usace.army.mil>.

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